

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office
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<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s): 16-55341

District Court/Agency Case Number(s): 14-cv-1679 JLS (BGS)

District Court/Agency Location: U.S. District Court for Southern California, San Diego

Case Name: Lycurgan, Inc. v. B. Todd Jones

If District Court, docket entry number(s) of order(s) appealed from: 56

Name of party/parties submitting this form: Lycurgan, Inc.

Please briefly describe the dispute that gave rise to this lawsuit.

BATF raided four of Lycurgan's locations in March of 2014 and conducted a search. In doing so, the BATF seized 5804 unfinished polymer parts known as lower receivers. BATF claimed the parts were illegal firearms and were being held as evidence in an ongoing investigation. Plaintiff denies these claims. BATF recently returned some of the parts/inventory to Plaintiff after many months of holding them without the right to do so. No criminal indictment has been filed nor any other criminal charges have been brought against Lycurgan. BATF never filed a action for forfeiture despite the timely filed claim. The District Court initially dismissed, but allowed the filing of an amended complaint. Which it then dismissed.

Briefly describe the result below and the main issues on appeal.

Defendant's Motion to Dismiss claimed that CAFRA did not give the Court jurisdiction to require Defendant to return the seized property under the Civil Asset Forfeiture Reform Act ("CAFRA") 18 USC § 983. Lycurgan then filed a motion for an order permitting an expedited Rule 34 inspection which would allow it to conduct discovery and present evidence to the Court on the jurisdictional issue. The District Court denied the motion for an expedited Rule 34 inspection. Then, the Court granted the Motion to Dismiss finding that the lower receivers in dispute were being held "as evidence of the illegal manufacture of firearms in an ongoing investigation." Plaintiff provided evidence that the parts were not illegal and that no criminal or civil forfeiture proceeding had been initiated. Further, the time for initiating a forfeiture proceeding had lapsed.

Describe any proceedings remaining below or any related proceedings in other tribunals.

This case arises from an order dismissing Plaintiff Lycurgan, Inc.'s First Amended Complaint for lack of subject matter jurisdiction. This case was the subject of an earlier filed appeal, which was dismissed in light of the non-finality of the prior order of dismissal, i.e., 9th Circuit Case 15-55228.

Provide any other thoughts you would like to bring to the attention of the mediator.

Lycurgan also has another Bivens case pending in the Southern District of California, Case No. 14-cv-00548-JLS-BGS, and another related and fully briefed Ninth Circuit Appeal arising from the same events but from a different case number on different issues -- i.e. refusing to provide an unsealed affidavit for search warrant, Case No. 14-56550

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached
 (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list
 may result in sanctions, including dismissal of the appeal.

Signature /s/ Scott A. McMillan

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for Lycurgan, Inc.

Note: Use of the CM/ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in CM/ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into CM/ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.